

ENTERED

May 07, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSEPH STEPHEN BOTT,

§

Plaintiff,

§

v.

§

CIVIL ACTION H-20-999

HARRIS COUNTY JAIL, *ET AL.*,

§

Defendants.

§

MEMORANDUM OPINION AND ORDER

Plaintiff, a convicted prisoner assigned to the Galveston County Jail at the time of filing, filed this section 1983 lawsuit against the Harris County Jail, the Galveston County Jail, Cathy White, and “Dr. Killyon.” Plaintiff expressly sues defendants White and Killyon in their official capacity and states that they are employed at the Galveston County Jail. He seeks \$1 million in monetary damages and injunctive relief for hernia surgery.

Having screened the complaint as required by sections 1915 and 1915A, the Court severs plaintiff’s claims against the Galveston County Jail, Cathy White, and Dr. Killyon, transfers the severed claims to the Galveston Division of the Southern District of Texas, and dismisses plaintiff’s remaining claims against the Harris County Jail.

Background and Claims

Plaintiff alleges, and public court records for the Harris County District Clerk’s Office show, that he was arrested in Harris County, Texas, on September 17, 2017, for assault on

a family member. He alleges that, at some unspecified date in August 2017,¹ while being escorted from the jail to a court hearing, he slipped and fell on a wet floor. (Docket Entry No. 1, p. 7.) Plaintiff reported abdominal pain later that evening and submitted a sick call request. A Harris County physician examined him two days later and diagnosed the problem as a hernia. Plaintiff was given pain and anti-inflammatory medications. Plaintiff alleges that the examination and treatment took place in early August 2018, and that he was released from jail on August 29, 2018. *Id.*, p. 5.

Following his release from jail, plaintiff returned to carpentry work as an independent contractor. The hernia apparently “popped” on December 28, 2018, while plaintiff was hanging cabinets at work. He was seen by a physician, who recommended surgery. Plaintiff had no insurance or funds for surgery, and applied for medical assistance through a public program in March 2019. He was told the public program would take six to eight months for approval. He states that he could no longer perform his carpentry work and was terminated.

Plaintiff was subsequently arrested on September 15, 2019, and was detained at the Galveston County Jail. He informed jail medical staff of his hernia and was given pain and anti-inflammatory medication. He told them that he needed surgery, but Galveston County Jail defendants White and Killyon ultimately said surgery would not be provided because he

¹Plaintiff inconsistently pleads the timing of his slip and fall incident. At one place in his complaint, he claims that it occurred in August 2017. (Docket Entry No. 1, p. 7.) Elsewhere, he indicates that it occurred shortly before his release from jail in late August 2018. *Id.*, p. 5. A review of his criminal proceedings suggests that the incident occurred in 2018. *See State v. Bott*, Case No. 1564887 in the 178th District Court of Harris County, Texas.

would be discharged from jail too soon. Public court records for the Galveston County District Clerk's Office show that plaintiff pleaded guilty to a state jail felony of unauthorized use of a motor vehicle on February 20, 2020, and was sentenced to six months incarceration. *See State v. Bott*, Case No. 19CR2982 in the 212th District Court of Galveston County, Texas.

Plaintiff claims that the defendants violated his Eighth Amendment rights. He seeks monetary damages and injunctive relief for hernia surgery.

Severance and Transfer

Plaintiff's complaint shows that the incidents giving rise to plaintiff's claims against defendants Galveston County Jail, Cathy White, and Dr. Killyon occurred at the Galveston County Jail, which is located in Galveston County, Texas. Plaintiff also alleges that White and Killyon work at the Galveston County Jail. Galveston County is located within the jurisdiction of the Southern District of Texas, Galveston Division.

In the interest of justice and for the convenience of the parties and witnesses, plaintiff's claims against the Galveston County Jail, Cathy White, and Dr. Killyon are ORDERED SEVERED from this lawsuit and TRANSFERRED to the Galveston Division. 28 U.S.C. §§ 1391(b), 1404(a).

Dismissal of Claims Against the Harris County Jail

Plaintiff names the Harris County Jail as the remaining defendant in this lawsuit. The jail is operated by the Harris County Sheriff's Office. As a subdivision of Harris County,

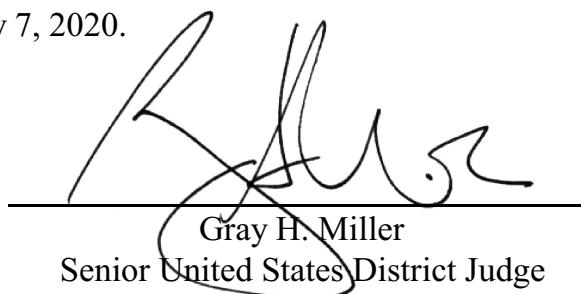
however, neither the Harris County Sheriff's Office nor the Harris County Jail have the capacity to be sued as required by Federal Rule of Civil Procedure 17(b). *See Potts v. Crosby Ind. Sch. Dist.*, 210 F. App'x 342, 344–45 (5th Cir. 2006) (upholding dismissal of claims against the Harris County Sheriff's Office on the grounds that, as a “*non sui juris* division of Harris County,” it lacked the capacity to be sued); *Aguirre v. Harris County Sheriff's Office*, C.A. No. H-11-3440, 2012 WL 6020545, at *2 (S.D. Tex. Nov. 30, 2012). Therefore, plaintiff may not pursue his claims against the Harris County Jail because it lacks the requisite legal capacity, and his claims against the Harris County Jail are DISMISSED WITHOUT PREJUDICE.

Conclusion

The Court ORDERS as follows:

1. Plaintiff's claims against the Galveston County Jail, Cathy White, and Dr. Killyon are ORDERED SEVERED from this lawsuit and TRANSFERRED to the United States District Court for the Southern District of Texas, Galveston Division.
2. Plaintiff's claims against the Harris County Jail are DISMISSED WITHOUT PREJUDICE.
3. This lawsuit is DISMISSED WITHOUT PREJUDICE.

Signed at Houston, Texas, on May 7, 2020.



Gray H. Miller
Senior United States District Judge